

REMARKS

Claims 1-10, 13-20, 23-30, 33-45 and 51-60 are pending in the application.

Claims 1-10, 13-20, 23-30, 33-45 and 51-60 stand rejected.

Claims 1, 15, 25, 35, and 38 have been amended. Support for the amendments can be found in at least paragraph [0030] of the present Specification.

Rejection of Claims under 35 U.S.C. §103

Claims 1-10, 13-20, 23-30, 33-45, and 51-55 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over by Sakiso, U.S. Patent Publication No. 2004/0105390 ("Sakiso"), in view of Gai et al., U.S. Patent No. 6,535,491 B2 ("Gai"). While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in a continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed.

Applicants assert that Claims 1-10, 13-20, 23-30, 33-45, and 51-55 are patentable over Sakiso and Gai, taken alone or in any permissible combination, because Sakiso and Gai, taken alone or in any permissible combination, do not disclose (or render obvious) the limitations of amended independent Claims 1, 15, 25, 35, and 38. For example, Sakiso and Gai, taken alone or in any permissible combination, fail to disclose (or render obvious): "said port of said network element is disabled as a result of said port being associated with said virtual network and a bandwidth, between the upstream portion of the communications network and the network

element, falling below a predetermined threshold as a result of the failure of the first link" (*emphasis added*), as recited in the independent claims.

Sakiso discusses a method and system for "accelerating fault recovery in a redundant, tree structured local area network." Paragraph [0018], Sakiso. To accomplish such accelerated fault recovery, Sakiso defines "some of the LAN port . . . as critical ones." Paragraph [0018], Sakiso. Thus, other LAN ports in Sakiso are "dependent on the critical links." Paragraph [0018], Sakiso. If one of Sakiso's critical LAN ports or corresponding link is found to be non-functional, all LAN ports or corresponding links depending on the critical LAN ports are also declared as non-functional. Paragraph [0018], Sakiso. However, the cited passage or any other passage in Saksio, taken alone or in any permissible combination with Gai, fails to make any mention of disabling a port as a result of the bandwidth between a network element and an upstream portion of a network falling below a predetermined threshold, as claimed. Gai also fails to make any mention of a comparison of available bandwidth between a network element and an upstream portion of a network with a predetermined threshold and disabling a port in response to that comparison.

Col. 5, lines 10-15 and col. 15, lines 48-65 of Gai is cited by the Office Action as allegedly disclosing "a method of detecting a failure of a link wherein the first link is associated with a virtual network and also the second link is associated with the virtual network and the port of the network element is disabled as a result of the port being associated with the virtual network," since the Office Action correctly asserts that Saksio fails to disclose such a method. *See* page 5, Office Action. While Applicants maintain that the cited passages do not disclose (or render obvious) the limitations of the independent claims, Applicants further note that nothing in

the cited passages or anywhere in Gai, taken alone or in any permissible combination of Sakiso, shows, teaches, or suggests comparing a bandwidth with a predetermined threshold.

In fact, one with skill in the art would not even expect Sakiso and Gai, taken alone or in any permissible combination, to disclose (or render obvious) the recited limitations because Sakiso stresses the importance of rapid propagation of knowledge of a fault down to hosts along the critical and related dependent links. *See* at least paragraph [0018] of Saskio. Measuring anything in the event of a critical link's failure, much less examining remaining bandwidth, would be contrary to the techniques disclosed in Saskio, as Saskio's system is fully occupied simply recovering the failed link. By contrast, the claimed invention is directed to maintaining a communications channel between the downstream portion and the upstream portion of the communications network, but not at the expense of unnecessarily closing ports when adequate bandwidth between the downstream portion and the upstream portion is still maintained. The claimed invention's techniques can accomplish these analyses at network speed without difficulty. Thus, lacking this ability, Saskiso and Gai are unable to show teach, suggest, or achieve a system of the claimed invention. For at least the foregoing reasons, independent Claims 1, 15, 25, 35, and 38, and all claims dependent therefrom, are patentable over Sakiso and Gai, taken alone or in any permissible combination. Applicants respectfully request that the rejection be withdrawn.

Claims 56-60 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakiso, U.S. Patent Publication NO. 2004/0105390 ("Sakiso"), in view of Gai et al., U.S. Patent No. 6,535,491 B2 ("Gai") as applied to claims 1, 15, 25, 35 and 38 respectively above, and further in view of Hamami, U.S. Patent No. 5,959,972 ("Hamami"). While not conceding that the cited references qualify as prior art, but instead to expedite prosecution, Applicants have chosen to

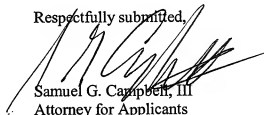
respectfully disagree and traverse the rejection as follows. Applicants reserve the right, for example, in the continuing application, to establish that the cited references, or other references cited now or hereafter, do not qualify as prior art as to an invention embodiment previously, currently, or subsequently claimed. Page 20 of the Office Action does not cite Hamami as disclosing (or rendering obvious) any elements of independent Claims 1, 15, 25, 35, and 38. Thus, Claims 56-60 are patentable over Sakiso, Gai, and Hamami, taken alone or in any permissible combination, by virtue of their dependency on independent Claims 1, 15, 25, 35, and 38. Thus, Applicants respectfully request that the rejection be withdrawn.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5084.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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